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8 Attorneys for Plaintiff STORMWATER SYSTEMS, INC. fka SAFE DRAIN INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 SAFE DRAIN INC., a California corporation, ) Case No. C-14-01867 DMR  
12 )  
13 Plaintiff, ) **PLAINTIFF'S OPPOSITION TO**  
14 ) **DEFENDANTS' MOTION TO DISMISS**  
15 vs. )  
16 ) **Date: September 25, 2014**  
17 KATE VITO, an individual, SPCC ) **Time: 11:00 a.m.**  
18 SOLUTIONS, INC., a Nevada corporation, and ) **Courtroom: 4, 3rd Floor**  
19 JOHN BARHAUGH, an individual, ) **The Hon. Donna M. Ryu**  
20 )  
21 Defendants. )  
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29 **1. INTRODUCTION**

30 As the Court noted in its Order Denying Motion to Change Time [Docket No. 43],  
31 entered on August 26, 2014, this motion is moot. Evidence was presented that the corporation  
32 had been revived. Plaintiff was newly named "Stormwater Systems, Inc." because Defendant  
33 Vito had incorporated under the name "Safe Drain, Inc." on August 7 at a time when Plaintiff  
34 was suspended. Nevertheless, Plaintiff agreed to provide additional evidence of the corporation's  
35 revivor prior to taking the motion off calendar. That was done on August 30 when the website  
36 again reflected that Plaintiff was an "active" corporation. Counsel for plaintiff requested as a  
37 courtesy that it be confirmed this motion would be taken off calendar. Counsel for Barhaugh has  
38 not accepted the website that Defendants relied upon, requesting the Court take judicial notice.

1 For reasons that remain unarticulated (as of finalizing these papers), the motion has not been  
2 taken off calendar even though it is moot, on its face and on triggering conditions that were  
3 agreed by the parties.

4  
5 **2. It Was Agreed the Motion Would Go Off Calendar When the State Website**  
6 **Reflected Revivor**

7 The Secretary of State website reflects in the “Business Entity Detail” page for Plaintiff  
8 Stormwater Systems, Inc. fka Safe Drain Inc. that the corporation is “active,” restored to its rights  
9 and privileges, and no longer “suspended. See Request for Judicial Notice and Townsend  
10 Declaration, filed herewith. As set forth in Plaintiff’s opposition to motion to change time, it was  
11 necessary for Plaintiff to change its name from “Safe Drain Inc.” to “Stormwater Systems, Inc.”  
12 because defendant Kate Vito filed articles for a new corporation under the name “Safe Drain,  
13 Inc.” on August 7, 2014 at a time when Plaintiff was suspended.

14 Following the Order Denying Motion to Change Time [Docket No. 43], entered  
15 by the Court on August 26, 2014, counsel for Plaintiff entered into discussions with the  
16 attorneys for defendants to resolve the following: 1) obtaining additional information that the  
17 corporation was revived, 2) addressing and providing additional time as promised to respond to  
18 discovery, and 3) addressing when answers/counterclaims would be due once the first issue was  
19 suitably addressed.

20 On August 28, counsel for Plaintiff spoke with Defendant Vito’s counsel, and they  
21 confirmed their agreement by email. Townsend, Decl., ¶5; Exh. A. It was agreed that, in addition  
22 to staying discovery responses until September 25, the answer/counterclaim would be due two  
23 weeks from when counsel for Plaintiff provided him a copy of the certificate of revivor or two  
24 weeks from when I provided him by email “notification of the revivor being up on the Secretary  
25 of State website, whichever is earlier.” *Id.* at p. 3.

26 On August 28, counsel for Plaintiff spoke with Defendant Barhaugh’s counsel, and they  
27 confirmed their agreement by email. *Id.*, ¶6; Exh. B. It was agreed that, in addition to staying  
28 further discovery responses until September 25, the answer/counterclaim would be due two

1 weeks from when counsel for Plaintiff provided him a copy of the certificate of revivor or two  
2 weeks from when counsel for Plaintiff provided him by email “notification of the revivor being  
3 up on the Secretary of State website, whichever is earlier.” *Id.* at p. 3.

4 On August 30, 2014 (Saturday) counsel for Plaintiff provided notification of the  
5 corporation’s revivor to counsel for both Vito and Barhaugh. *Id.*, ¶7; Exh. C. I received prompt  
6 reply from counsel for Barhaugh, Mr. Dillingham, stating that “it isn’t clear to me that the entity  
7 named Stormwater Systems, Inc. can pick up right where Safe Drain left off or that it’s legally  
8 the same entity...” *Id.*, Exh. C at p. 1. Counsel for Plaintiff responded and pointed out that the  
9 entity number was identical to both the corporation that had been named “Safe Drain Inc.” was  
10 the same as the corporation named Stormwater Systems, Inc. *Id.* at p. 1. A copy of the  
11 amendment to Safe Drain Inc.’s articles of incorporation effecting the name change had  
12 previously been supplied. It can also be seen from the Secretary of State records in Defendants’  
13 motion and the records regarding Stormwater Systems that both records evidence a corporation  
14 incorporated on June 23, 2000.

15 Counsel for Plaintiff did not hear further from Mr. Dillingham until Tuesday morning,  
16 September 2, advising me that he had a “busy day” and that counsel for Plaintiff should not  
17 expect to hear from him until Tuesday night or sometime on Wednesday, the day my opposition  
18 papers would be due. *Id.*, ¶8; Exh. D. Counsel for Plaintiff then called Mr. Carson, counsel for  
19 Vito. He returned the call later in the day and advised that he did not require any further evidence  
20 of the corporation having been revived but, because a joint motion had been brought, he had to  
21 obtain approval of Mr. Dillingham to take the motion off calendar.

22 Plaintiff’s request for judicial notice is copied from and identical to the request for  
23 judicial notice Defendants filed to admit the information presented on the Secretary of State’s  
24 website to show the status of Plaintiff’s corporation: at that time “suspended,” but now “active.”  
25 Defendants agreed to rely on the same website information to confirm the corporations revivor,  
26 i.e., whether its “active” status had been restored.

27 As of the finalization and filing of this opposition, counsel for Barhaugh has not  
28 explained why this motion should not be taken off calendar.

1     **3.     CONCLUSION**

2             Based on the foregoing and Plaintiff's opposition to the motion to change time, the  
3 motion is moot both as a matter of law and as a matter of fact based on the agreement the parties  
4 reached. The motion should be denied.

5  
6  
7 Dated: September 3, 2014

LAW OFFICES OF LAWRENCE G. TOWNSEND

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9  
10 By: 

Lawrence G. Townsend  
Attorneys for Plaintiff STORMWATER  
SYSTEMS, INC. fka SAFE DRAIN INC.

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